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Court: Agency's review of mining project violated NEPA

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The Nuclear Regulatory Commission violated the National Environmental Policy Act in allowing the Dewey-Burdock uranium project in South Dakota's Black Hills to proceed. Azarga Uranium Corp.

The Nuclear Regulatory Commission unlawfully advanced a South Dakota uranium mining project that lacked an adequate environmental review, a federal court ruled today.

The NRC violated the National Environmental Policy Act with its license for the Black Hills project, the U.S. Court of Appeals for the District of Columbia Circuit ruled.

The law "obligates every federal agency to prepare an adequate environmental impact statement before taking any major action, which includes issuing a uranium mining license," Chief Judge Merrick Garland wrote for a three-judge panel. "The statute does not permit an agency to act first and comply later."

The ruling is a win for the Oglala Sioux Tribe, which had worried that the project would lead to the destruction of cultural, historical and religious sites.

At issue is the Dewey Burdock uranium mining project in southwest South Dakota. Powertech in 2009 applied to NRC for a license for the 10,580-acre project.

The agency granted the company's application in 2014, along with issuing an environmental impact statement under NEPA.

But the NRC's Atomic Safety and Licensing Board later agreed with the Oglala Sioux Tribe that the agency's EIS failed to take the required "hard look" at impacts because it did not address the effects of the project on tribal resources.

The agency, though, decided to leave the license in place while it worked to fix the environmental review, reasoning that it wouldn't cause irreparable harm.

But Garland wrote that the board violated NEPA by leaving the license in effect.

The commission's board "did not find just a technical violation of NEPA," he wrote. Rather, according to Garland, NRC's failure to consider impacts on the tribe was a "significant deficiency."

"Powertech now has the right to an effective license, despite an ongoing NEPA violation that the agency acknowledges," wrote Garland, a Clinton appointee.

The judge said the NRC's action appeared to be part of a larger pattern.

"Moreover, this was not a one-off decision by the NRC," Garland wrote. "Rather, it appears to be the agency's settled practice."

He noted that the commission had previously allowed a license for uranium projects in Wyoming and Nebraska to remain in effect despite findings that NRC staff had not complied with NEPA.

"The agency's decision in this case and its apparent practice are contrary to NEPA," Garland wrote. "The statute's requirement that a detailed environmental impact statement be made for a 'proposed' action makes clear that agencies must take the required hard look before taking that action."

The court sent the case back to the NRC for further proceedings consistent with the ruling. Judges Karen LeCraft Henderson and Thomas Griffith, both Republican appointees, heard the case with Garland.

Link to opinion:

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